



New Mexico's Statutory Mineral Liens: What Oil and Gas Companies Need to Know

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The current oil and gas market mandates that operators, working interest owners, and midstream companies understand how their assets may be impacted by statutory mineral liens. These liens are commonly used by oilfield contractors to secure payment of services provided in furtherance of upstream and midstream operations. Because mineral liens are granted by statute, a contractor's lien may attach to mineral assets owned by a party with whom it did not even contract. Subcontractors, for example, often assert liens over lease assets owned by a working interest owner or pipeline assets owned by a midstream company when a general contractor becomes insolvent. Non-operating working interests may likewise be subject to a lien asserted by a contractor hired by an insolvent operator. As the downturn of the market persists, upstream and midstream assets will be more vulnerable to statutory liens as more owners, operators and/or their general contractors become insolvent and field service providers are not paid.

Any party owning interests in upstream and midstream assets should, at a minimum, understand the nature of mineral liens and the variations of each state's statute. These variations include the type of person who can invoke a lien, the property subject to a lien and the requirements for perfecting a lien. The following provides a brief examination of the Oil and Gas Lien Act in New Mexico, §§ 70-4-1, *et. seq.* (the "NM Lien Act").

I. The "Secret Lien"

The NM Lien Act grants lien rights to contractors immediately upon the provision of services to oil and gas properties. Once payment is overdue, the NM Lien Act requires the contractor to record a lien statement in the county where the property is located to perfect the lien. The mineral lien, once perfected, will then "relate back" to when the contractor first commenced services. Therefore, between the time the contractor commences work and when it files the lien statement, the lien is effectively a "secret lien" that is absent from the public record. Relation back can be particularly troublesome for other secured creditors, including lenders, competing for the same assets because mineral liens earn a form of "super-priority" pegged to the date services are first rendered rather than the date a lien statement is recorded. Any interests perfected in the interim will lose priority in bankruptcy or foreclosure.

II. Potential Lien Claimants

The NM Lien Act requires a claimant to have contracted with "the owner of any land, oil and gas permit [or] leasehold" *or* "the owner of any gas, oil, or gasoline pipeline." The claimant must have also provided services or materials employed in the "digging, drilling, torpedoing, completing, maintaining, equipping, operating or repairing [of] any oil or gas well" *or* "in the

construction, operation, maintenance or repairing any gas, oil, or gasoline pipeline.” N.M. Stat. Ann. § 70-4-1. Subcontractors are afforded the same lien rights. N.M. Stat. Ann. § 70-4-3.

Courts interpret the NM Lien Act liberally in determining who qualifies as a claimant, but lien rights are still controlled by the express terms of the statute. Constructing and maintaining a road associated with an “oil or gas well” or a “gas, oil or gasoline pipeline” will fall within the scope of the statute. *See In re Lewis Energy Corp.*, 36 B.R. 205, 207 (Bankr. D. Colo. 1983). However, the same work conducted in relation to another type of facility not specified in the NM Lien Act, such as a saltwater disposal well, would likely not qualify as lienable work. The contractor must service an oil or gas well or pipeline under the plain terms of the statute.

III. Property Subject to the Lien

A. The Entire Leasehold or Right-of-Way

The NM Lien Act, unlike in other states such as Texas and Colorado, extends the mineral lien to the *entire* working interest in the lease. N.M. Stat. Ann. § 70-4-1. Therefore, a non-operator who pays its share of expenses to an operator may have to pay a second time to a contractor to remove the lien from the lease. However, the lien does not “extend to the property, leasehold or working interest of any owner who does not have a working interest in the well upon which the labor was performed or for which the materials were furnished or hauled.”

The NM Lien Act is not clear as to whether a lien for services provided in connection with an oil or gas pipeline extends to upstream wells or lease interests (a plain reading of § 70-4-1 suggests not). However, the lien will clearly extend to the right-of-way underlying a pipeline.

B. Production and Proceeds

The NM Lien Act expressly provides that the lien will attach to the “proceeds from the sale of oil and gas produced...inuring to the working interest.” N.M. Stat. Ann. § 70-4-1. Other states do not extend lien rights to production and proceeds, including Texas and Colorado.

C. Equipment and Fixtures

The NM Lien Act extends a lien over the land, leasehold, wells or pipelines for which the contractor provided services as well as all related equipment and fixtures, including “the buildings and equipment thereon, and the appurtenances thereto.” With regard to services or materials furnished for an oil or gas well, the lien also broadly extends to “all the other oil and gas wells, fixtures, machinery, tools, equipment and appliances, used or employed in operating or developing, for oil and gas purposes, upon the land, oil and gas permit, [or] leasehold, ... for which the material, tools, machinery, equipment or supplies were furnished or hauled, or labor performed.” N.M. Stat. Ann. § 70-4-1.

IV. Potential Pitfalls Related to Lien Perfection

A claimant must comply with strict procedures under the NM Lien Act to perfect a lien or risk jeopardizing the validity of the lien. Therefore, in terms of defending against such claims, an owner of interests in assets subject to a mineral lien should pay close attention to whether a contractor complied with all procedural requirements.

A. Untimeliness

A general contractor must file a lien statement within 210 days after furnishing the last services or material to the owner, and subcontractors have 180 days to do the same. A common ground for invalidating a mineral lien is because a claimant records a statement too late. *See In re Lewis Energy Corp.*, 36 B.R. 205 (Bankr. D. Colo. 1983). In fact, contractors often calculate the deadline to file a lien statement based on the date of the final invoice, which usually does not reflect the last date the contractor actually provided services or materials to a site.

B. Sworn Statement

A lien statement must be verified by affidavit. At least one recent decision invalidated a lien, in part, because the statement was not properly acknowledged and verified.

C. Lack of information

A lien statement “shall” contain the following information under the NM Lien Act:

the name and residence of the claimant, the amount and the items claimed, the name of the person to whom the materials, tools, machinery, equipment or supplies were furnished or hauled or for whom the labor was performed, the name of the owner and a description of the property upon which the lien is claimed, verified by affidavit.

N.M. Stat. Ann. § 70-4-4. While courts hold that “substantial compliance” with these requirements generally suffices, a trend in the Permian Basin is for contractors to list broad tracts of land (e.g., quarter or half sections or related lots) as the property description and include no name of the land owner. These blanket descriptions could provide additional grounds to invalidate the lien.

For more information about mineral liens in New Mexico, please contact [Tyler L. Weidlich](#).